

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

ESHED ALSTON, )  
 ) C.A. No. 10C-10-026 JTV  
Plaintiff, )  
 )  
v. )  
 )  
DELAWARE STATE UNIVERSITY,) )  
AMIR MOHAMMADI, RICHARD ) )  
CATHCART, CLAIBORNE SMITH, ) )  
NANCY WAGNER, HARRY L. ) )  
WILLIAMS, CARLOS HOLMES, ) )  
JAMES OVERTON, and CAROLYN ) )  
CURRY, ) )  
Defendants. ) )

*Submitted: December 10, 2010*  
*Decided: March 31, 2011*

EShed Alston, *Pro Se*.

Marc S. Casarino, Esq., White & Williams, LLP., Wilmington, Delaware. Attorney  
for Defendants.

*Upon Consideration of Defendants'*  
*Motion to Dismiss*  
**GRANTED**

**VAUGHN, President Judge**

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### ORDER

Upon consideration of the motion of defendant Delaware State University to dismiss the complaint, the plaintiff's opposition, and the record of the case, it appears that:<sup>1</sup>

1. The defendants in this case are Delaware State University and various individuals who are management officials or employees of the University. Defendant Delaware State University has filed a Motion to Dismiss the Complaint Under Superior Court Civil Rule 12(b) on the grounds that the plaintiff has failed to state a claim upon which relief can be granted.

2. The papers filed in this case, and related cases, are voluminous and overlapping. In some of the papers the plaintiff, EShed Alston, has filed in this case, he has referred to a Motion to Recuse. While no such motion has been filed in this case, a motion asking me to recuse myself has been filed in the pending case of *Alston v. Kent County Sheriff's Office*.<sup>2</sup> The motion in that case has not been noticed or presented, and therefore has not been acted upon. Under these circumstances, and because of the references to recusal in this case, I believe it necessary to address recusal before considering the merits of the Motion to Dismiss.

3. The plaintiff claims in the motion filed in the above-mentioned *Sheriff's Office* case that my assignment to two cases in which he is a party, was improper on the grounds that said assignment was not based on the Court's sequential assignment

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<sup>1</sup> The motion has literally been filed on behalf of defendant Delaware State University only. However, I infer from the record of the case as a whole that it was intended to be for the benefit of all defendants.

<sup>2</sup> K10C-06-029 JTV.

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plan. The second case referred to in the motion is *Alston v. City of Dover* which was filed five days before the *Sheriff's Office* case.<sup>3</sup> The Motion For Recusal in the *Sheriff's Office* case was filed two days after the filing of the complaint in that case.

4. On the day after the *City of Dover* case was filed and assigned, the case of *Alston v. Thomas* was assigned to me.<sup>4</sup>

5. The *Thomas* case was originally assigned to Judge Witham, but he recused himself, and by implication, all of Mr. Alston's future cases. In his recusal order, Judge Witham observed that 7 out of 10 cases filed by the plaintiff since 1999 had been assigned to him.

6. The sequential assignment system is subject to my authority as President Judge to assign cases. I approved the assignment of the *City of Dover* and *Thomas* cases to myself. The *Sheriff's Office* case and the Delaware State University case are all both related to the *City of Dover* case by subject matter and party. I find that the allegation that assignment of the cases was improper is without merit.

7. When faced with a claim of personal bias or prejudice, the judge is required to engage in a two-part analysis.<sup>5</sup> The first is a subjective analysis, that is, whether the judge is satisfied that he or she has no subjective bias for or against the party involved. The second is an objective analysis, that is, whether there is an appearance of bias sufficient to cause doubt of the judge's partiality. I have performed both analyses. I have no subjective bias for or against the plaintiff. As to the objective

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<sup>3</sup> K10C-06-026 JTV.

<sup>4</sup> K09C-05-030 JTV.

<sup>5</sup> *Los v. Los*, 595 A.2d 385 (Del. 1991).

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analysis, at the time the plaintiff filed his motion in the *Sheriff's Office* case, I had not had any contact with him whatsoever and not presided over any of the previous cases filed by the plaintiff. I conclude that no facts or circumstances exist which create any appearance of bias. Therefore, the plaintiff's request for recusal is *denied*. I will now proceed to consider the merits of the Motion to Dismiss.

8. The plaintiff's complaint consists of six pages and is titled as follows:

**COMPLAINT OF VIOLATION OF FEDERAL AND STATE CONSTITUTIONAL LAW SPECIFICALLY A COMPLAINT OF INTENTIONAL OPPRESSION OF FREEDOM OF PRESS AND RELIGION AND OF NEW HYBRID SOLAR HYDRO INVENTION AND A COMPLAINT OF MALICIOUS PERSECUTION OF AND BY INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS PREDICATED ON RACE AND A COMPLAINT OF INSTITUTIONAL RACISM BY PROXY PERPETRATED BY BLACK AGENTS DESCRIBED AS UNCLE TOMS COVERTLY WORKING FOR CAUCASIANS AS AGENTS THEREOF CIRCUMVENTING THE LAND GRANT CHARTERS TRUE INTENT. THE INSTITUTION HAS BEEN PURPOSELY PERVERTED TO AND FOR THE BENEFIT OF THE NAMED CAUCASIANS, AT THE SAME TIME USURPING THE ABILITY OF THE PLAINTIFF THE INTENDED AMER-AFRICAN RECEPIENTS A PRIOR STUDENT IN GOOD FAVOR DENIED BY RACIST TO BE THE TRUE INTENDED BENEFICIARY OF ANY AND ALL OF THE INSTITUTIONS JUST BENEFITS. THOSE BENEFITS NOW ILLEGALLY CIRCUMVENTED USURPED AND CONTROLLED BY CAUCASIANS RACIST**

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9. The body of the complaint expands on the allegations in the title. It centers, however, on two issues. One is an allegation that the defendants have blocked, oppressed, and circumvented the plaintiff's effort to patent, research, and develop a new hybrid solar hydro invention into a superior power plant at Delaware State University. The other is an allegation that the University refused to put the plaintiff's new book, *The Lamb's Book of Life*, on its library bookshelves after allegedly having agreed to do so. The complaint seeks \$77,777,777 in damages.

10. In his complaint the plaintiff discusses the purpose of the land grant college system, which was to provide educational institutions for black citizens, such as himself, in states that maintained separate educational facilities. Delaware State University is a former land grant college. He discusses proxy racism and accuses the caucasian defendants of being racist, of orchestrating the University's events, and of "pulling the strings" against the plaintiff's constitutionally protected civil rights. Also, the plaintiff accuses the caucasian defendants of using Delaware State University for political activities, the black defendants of being unscrupulous "front men" who do the bidding of the aforementioned caucasians. Next, he asserts a claim of intentional infliction of emotional distress in the furtherance of racial discrimination including racial profiling. He alleges that Delaware State University and the *City of Dover* are attempting to stop or delay research and development of his hybrid solar hydro invention long enough to apply for a patent for themselves. He contends that he has been purposely, intentionally, and deliberately denied both the freedom of press and religion in this case. This includes the alleged refusal to put his book on the University's library bookshelves. He also discusses the mental and

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emotional effect which these grievances have had upon him. The defendants' alleged interference with his hybrid solar hydro invention and their alleged refusal to put his book on the University's book shelves were, in the plaintiff's opinion, based on racial discrimination.

11. When deciding a Motion to Dismiss for failure to state a claim upon which relief can be granted, a complaint is subjected to a broad test of sufficiency.<sup>6</sup> Dismissal is appropriate only if it is reasonably certain "that the plaintiff could not prove any set of facts that would entitled him to relief."<sup>7</sup> The complaint will not be dismissed unless it clearly lacks factual or legal merit.<sup>8</sup> When considering a motion to dismiss, the court will accept all well-pleaded allegations as true.<sup>9</sup> A court, however, does not blindly accept as true all allegations of a complaint nor draw inferences from them in plaintiff's favor unless they are reasonable inferences.<sup>10</sup> In this context, "well-pleaded allegations include specific allegations of fact and conclusions support by specific allegations of fact."<sup>11</sup>

12. While the plaintiff alleges violations of his freedom of press, speech, and

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<sup>6</sup> *C & J Paving, Inc. v. Hickory Commons, LLC*, 2006 WL 3898268 (Del. Super.).

<sup>7</sup> *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).

<sup>8</sup> *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

<sup>9</sup> *Spence*, 396 A.2d at 968.

<sup>10</sup> *White v. Panic*, 783 A.2d 543, 549 (Del. 2001).

<sup>11</sup> *Id.* at 549.

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of religion, intentional infliction of emotional distress, malicious persecution, and oppressive action, I conclude that he has failed to state a claim upon which relief can be granted. The plaintiff implies that Delaware State University's status as a former land grant college, and his status as a black citizen and descendant of slaves, created legal duties on the part of the University toward him. But I find, based upon an examination of the complaint, that Delaware State University has no legal duty relevant to the matters of which the plaintiff complains.

13. I find that the allegations in connection with the hybrid solar hydro invention are conclusory and insufficient to support a claim upon which relief can be granted. The complaint does not set forth any specific act or conduct on the part of the defendants that interferes with any legal right which the plaintiff has, and the defendants are under no legal obligation to assist the plaintiff in his efforts to develop and market the invention.

14. As to the book, the defendants are under no legal obligation to put the plaintiff's book on the library bookshelves. No facts or circumstances are identified which would create any such obligation. I find that the allegations made in connection with the book are insufficient to set forth a claim upon which relief can be granted.<sup>12</sup>

15. Finally, the defendant moves the Court to enjoin the plaintiff from filing future claims against Delaware State University or its personnel without leave of the Court. The statutory authority for this Court to enter such an injunction is found in

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<sup>12</sup> When the defendant presented its Motion to Dismiss, the book was returned to the plaintiff in the courtroom.

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10 *Del. C.* § 8803(e). That section applies to frivolous suits filed by persons who have been granted leave to proceed *in forma pauperis*. However, the plaintiff is not proceeding *in forma pauperis*. He has paid all required court costs. The Court no doubt has inherent authority to control its docket, but since 10 *Del. C.* § 8803(e) does not apply here and an injunction is normally beyond the Court's jurisdiction, I am not inclined to grant this request in the absence of some clearer authority.

16. All pending motions in this case are deemed moot by the granting of this Motion for Dismissal.

17. The defendants also request that the plaintiff be referred to the Office of Disciplinary Counsel under Supreme Court Rule 86(d). In this case, however, the plaintiff is proceeding *pro se* on his own behalf. This request is **denied**.

18. For the foregoing reasons, the defendant's Motion to Dismiss is **granted as to all defendants**. Costs are assessed against plaintiff.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

cc: Prothonotary  
Order Distribution  
File